

EXHIBIT 3
FILED UNDER SEAL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

THE STATE OF TEXAS, et)
al.,)
) Case No.
Plaintiffs,) 4:20-cv-00957-SDJ
)
vs.) Hon. Sean D. Jordan
)
GOOGLE LLC,)
)
Defendant.)

FRIDAY, AUGUST 30, 2024

HIGHLY CONFIDENTIAL - PURSUANT TO PROTECTIVE
ORDER

- - -

Videotaped deposition of Sundar
Pichai, held at the offices of Freshfields
Bruckhaus Deringer, 855 Main Street, Redwood
City, California, commencing at 10:04 a.m.
Pacific Time, on the above date, before
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Reporter, Certified Realtime Reporter,
Illinois, California & Texas Certified
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- - -

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1 A. -- in terms of I have -- I know
2 there is a training. I've heard of it. I
3 haven't directly seen it, but --

4 Q. All right. Fair.

5 Is it true that lawyers do this
6 training within Google? Or the legal team?

7 A. Again, I'm not fully sure of
8 the specifics of how the training is done,
9 but I would expect the legal team to be
10 involved, but I don't have firsthand
11 knowledge of that.

12 Q. All right. And I'll just say
13 you're not sure, but expect so. But expect
14 involvement of legal.

15 Is that fair?

16 A. Yes.

17 Q. You do know that your personal
18 training that you've had as an employee --
19 even though you're the CEO, you're still on
20 employee.

21 Right?

22 A. Correct.

23 Q. You know that your personal
24 training was done by lawyers.

25 Right?

1 A. That's correct.

2 Q. All right. So at least as far
3 as you're concerned, the answer would be
4 true?

5 A. That's correct.

6 Q. All right. Now, is it also
7 true that Google used Chat for purposes
8 including anything sensitive?

9 A. We definitely use Chat for
10 regular communication as part of our ongoing
11 work.

12 Q. Okay. But I'm looking beyond
13 just regular communication. I want to talk
14 about for sensitive communication.

15 You used Chat for sensitive
16 matters, too, didn't you?

17 A. Are you talking about the
18 company or me personally?

19 Q. Both. You can answer it either
20 way you wish.

21 A. You know, I have primarily used
22 Chat for coordinating meetings, a quick ping
23 to ask someone to follow up on stuff.

24 I definitely understand my
25 obligations regarding litigation holds, so I

1 don't discuss any matters which are covered
2 by litigation holds or in general any
3 substantive business communications in Chat.

4 Q. All right. Now, you're saying
5 you "don't" in a present tense sense. But if
6 we go back historically, you have.

7 Haven't you?

8 A. Sorry. To be very clear, till
9 about -- we made some changes to our policy
10 in, if I recall, in February of this year.

11 Q. February of '23, actually, I
12 believe.

13 A. February of '23, that's
14 correct.

15 And prior to that, you know, I
16 never used Google -- I didn't use Google Chat
17 for substantive business communications, and
18 I definitely didn't use them for anything
19 covered by litigation holds.

20 But post that change, I know
21 all Chats are stored by default, and so, you
22 know, I'm not -- I don't think about it that
23 explicitly because they're always reading.

24 Q. Well, let's pause and make sure
25 that we're speaking about the same subjects

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1 A. My understanding is that the
2 defaults varied depending on -- for certain
3 group meeting -- groups in Chats, the default
4 setting could have been on. So it depends on
5 what the default setting was. But I think
6 for one-on-one conversations, the default was
7 off.

8 And so that's my understanding.
9 I'm not exactly sure.

10 Q. Okay. All right. So it can be
11 computer or phone.

12 Fair?

13 A. Ah, that's correct.

14 Q. And this is one where, prior to
15 February of '23, default mode was to delete
16 at least one-on-ones in 24 hours.

17 MS. PATRICK: Objection. Form.

18 QUESTIONS BY MR. LANIER:

19 Q. Is that right?

20 A. That's my understanding.

21 Q. Okay. Now, I want to go back
22 to did Google use Chat for anything -- let's
23 do better than that.

24 Did Google use Chat for
25 anything sensitive? You've said that you did

1 not.

2 Is that correct?

3 A. I did not use it for
4 substantive business communications in
5 general, and I definitely did not use it for
6 any subject matters which were covered by
7 litigation holds.

8 Q. Okay. If you will go back to
9 Exhibit Number 1, and turn to page 5. I'd
10 like you to look at what's in paragraph 11.

11 "Google employees took the Care
12 training to heart. In multiple instances,
13 internal communications actively expressed
14 concerns about the possibility of disclosure
15 in litigation and the risks of preserving
16 Chats."

17 And the example given says,
18 "Comment freely, but be aware that this
19 document is not privileged. For anything
20 sensitive, please move to Chat or a video
21 call."

22 Do you see that?

23 A. Yes.

24 Q. So were you aware that Google
25 was using Chat, at least in that sense, for

1 anything that was going to be sensitive?

2 Did you know about that?

3 A. You know, I assume people are
4 using Chat for business communications, yes,
5 and which would include sensitive
6 communications.

7 Q. "Would include." Let's put
8 that clarifying language. "Would include"
9 anything sensitive.

10 Okay. And then when history is
11 off, these Chats are deleted after 24 hours.

12 Fair?

13 A. That's correct, unless you are
14 covered by a litigation hold where the
15 expectation is you would have to turn it on
16 so those documents would be retained.

17 Q. Well, then history wouldn't be
18 off.

19 A. That's right.

20 Q. But if history is off, then the
21 Chats are deleted.

22 True?

23 A. That's correct.

24 Q. Now, is it also true that
25 Google used Chat to discuss and delete

1 substantive business topics, including
2 antitrust matters?

3 MS. PATRICK: Objection. Form.

4 THE WITNESS: You know, I
5 wouldn't be aware of -- when you say
6 Google used -- Google employees, I
7 wouldn't know what employees were
8 doing, and I'm only aware of Chat
9 conversations I am part of.

10 QUESTIONS BY MR. LANIER:

11 Q. I would assume when the federal
12 judge issued these findings of fact that are
13 Exhibit Number 1, that you not only would
14 have read them as a CEO but as a board member
15 as well.

16 Did you -- did you read what
17 the judge said about your company?

18 A. I was -- I was briefed directly
19 on it, you know, briefed directly on it,
20 and the team made a set of recommendations
21 and implemented a set of recommendations
22 based on the judge's, you know, rulings,
23 which we took very seriously.

24 Q. Okay. Well, I understand you
25 were briefed on it, but my question is, did

1 seriously, but they also have a shareholder
2 obligation. They need to make sure that the
3 company is protected and makes as much money
4 as it fairly can.

5 True?

6 A. I disagree with this
7 characterization. You know, I -- our
8 obligation as a company is to comply with our
9 legal obligations. So I don't -- I don't see
10 this as a tension between that and making
11 money.

12 Q. But if that's your obligation,
13 when the judge says you didn't comply and
14 says it in strong language and says it was
15 blatant and purposeful, why didn't you hold
16 anybody accountable beyond just having the
17 people who evidently were at fault explain it
18 to you?

19 A. Our chief legal officer
20 reviewed our practices, and we instituted a
21 set of changes. We made changes to our Chat
22 retention policy. We instituted training
23 for -- on -- for our employees on appropriate
24 use and reinforced their obligations.

25 So we conducted training and,

1 you know, they are -- they are continuing to
2 work on this in an ongoing way.

3 Q. But you have hundreds of
4 lawyers who have already done something
5 that's blatantly wrong under the law, and
6 you're letting them then fix it without
7 holding them accountable for what they did
8 wrong?

9 A. To be very clear, through our
10 policies, always instructed employees to
11 comply with litigation holds, right? So that
12 is the instruction to employees. And we
13 expect our employees to uphold that -- uphold
14 that obligation.

15 Q. Huh.
16 So the idea that people should
17 take sensitive matters where documents will
18 not be privileged to Chat is something that
19 you thought was okay?

20 A. Sorry, could you -- could you
21 repeat the question?

22 Q. I'm sorry, yeah. That was not
23 fair. Let me put it up here so that you see
24 it.

25 So where internal

1 communications, multiple instances, not once,
2 internal, within Google, communications,
3 actively expressed concerns about possibly
4 being disclosed in litigation and the risks
5 of preserving these Chats, the reply was,
6 "Comment freely, but please be" -- or the
7 example was, "Comment freely, but please be
8 aware, this document is not privileged. For
9 anything sensitive, please move to Chat."

10 You approved that?

11 A. No, that's not consistent
12 with how we want our employees to conduct
13 themselves, if it is covered by litigation
14 hold.

15 Q. All right. So if Google, in
16 fact, used Chat to discuss and delete
17 substantive business topics, including
18 antitrust matters, as the judge says, it's
19 not something you approve of?

20 A. That's correct.

21 Q. But it is something that
22 apparently happened, according to the
23 findings of the judge.

24 True?

25 A. Yes, that's my understanding.

1 Q. All right. And because you
2 don't approve, changes took place.

3 Fair?

4 A. That's correct.

5 MS. PATRICK: Mark, we've been
6 going for about an hour, when you're
7 ready.

8 MR. LANIER: All right, Kathy,
9 hang on one sec. See if I'm at a good
10 stopping point.

11 I'm at a great stopping point.
12 We're midway through this stop, so we
13 are well on path to about a
14 two-and-a-half-hour depo.

15 MS. PATRICK: Great.

16 THE WITNESS: Thank you.

17 MS. PATRICK: We'll be back in
18 about ten minutes?

19 MR. LANIER: Whatever works for
20 y'all.

21 VIDEOGRAPHER: We're going off
22 record. The time is 11:30.

23 (Off the record at 11:30 a.m.)

24 VIDEOGRAPHER: We're going back
25 on record. The time is 11:41.

1 Q. But you did nothing about that
2 until 2023.

3 Also true?

4 A. You know, I knew employees were
5 required to comply with obligation holds and,
6 you know, I relied on my legal and compliance
7 teams, and they hadn't recommend anything
8 different until 2023. And when they
9 recommended a set of changes, you know, it
10 made sense to me, and they implemented those
11 changes.

12 Q. And so no changes were
13 implemented until 2023?

14 A. That's correct.

15 Q. But you yourself approved the
16 old policy because you knew it was there, and
17 you had the authority to change it, if
18 nothing else.

19 Right?

20 MS. PATRICK: Objection. Form.

21 THE WITNESS: I didn't
22 approve -- it was the way the company
23 was working when I became CEO. There
24 was -- you know, again, I rely on our
25 chief legal officer, our legal and

1 this document is something -- I mean, I
2 haven't read anything related to it, but
3 based on what you're showing me here, I don't
4 think that's the case.

5 Q. Yeah. Tell the jury about the
6 bad language in the 2008 e-mail, because
7 we're going to show the e-mail to the jury.
8 But tell them the language you don't approve
9 of.

10 MS. PATRICK: Objection. Form.

11 THE WITNESS: Can we -- can I
12 see the document, please?

13 QUESTIONS BY MR. LANIER:

14 Q. No, I don't have it in front of
15 me, and I wanted to see what your memory is.

16 A. You know, I remember receiving
17 it as an employee, and I've seen the document
18 since then, but this was a document -- at a
19 high level, I would need the document to be
20 more specific.

21 Q. Okay. I won't hold you to an
22 exact quote.

23 A. Yeah.

24 Q. Go ahead. At a high level.

25 A. I'm sorry.

1 At a high level, I think the
2 document talks about making sure employees
3 are -- you know, take into account context
4 when they communicate because their
5 conversations could be misconstrued, out of
6 context.

7 It tells that -- it announces a
8 change in policy for Google Chat retention,
9 and it also states that the -- you know,
10 in -- they have an obligation to preserve
11 documents related to litigation holds.

12 Q. You haven't said anything bad
13 about the document at all.

14 Is there anything you
15 disapproved of in that document, or do you
16 approve that document?

17 A. You know, I would need to read
18 it a bit more specifically to look at it
19 again. You know, it's a document from
20 16 years ago now.

21 Q. That you've looked at recently
22 because you were questioned about it?

23 A. That's right. But, you know,
24 there was a lot of documents I looked at.
25 But to be -- if you need me to comment

1 specifically, I would need to look at the
2 document.

3 Q. So nothing -- and we can pull
4 the document here after lunch, and I'll show
5 it to you.

6 But there's nothing in the
7 document that you remember being bad?

8 A. You know, at least as an
9 employee receiving it at that time --

10 Q. I'm talking about as a CEO
11 who's been looking at it --

12 MS. PATRICK: Sorry, please let
13 him finish his answers.

14 THE WITNESS: As an employee,
15 I understood my obligations when I
16 read that document.

17 As a CEO, when I looked at it,
18 you know, I think that I would have
19 been -- I may have worded portions of
20 the document clearly differently.

21 So...

22 QUESTIONS BY MR. LANIER:

23 Q. So you didn't see it at all the
24 way the judge did, as "a very clever approach
25 to try to hide evidence"?

1 A. I definitely didn't feel that
2 intention at that time as an employee
3 receiving that note.

4 Q. What about as a CEO looking
5 back?

6 A. Well, I take between -- as we
7 talked earlier, I definitely -- you know, we
8 take, you know, findings from judges very
9 seriously, and based on that, we undertook a
10 series of actions. And so, you know, I was
11 focused on that.

12 Q. Well, my point is, the Walker
13 memo and the Walker e-mail, this clear,
14 smoking gun, that is the same chief legal
15 officer, Kent Walker, that reports to you.

16 Isn't it?

17 A. That's correct.

18 Q. That is the same one whose
19 advice you were taking on what the document
20 retention policies would be.

21 Isn't it?

22 A. That's correct.

23 Q. That is the one you assigned
24 the responsibility of deciding what it should
25 be, and you went along with it.

1 Right?

2 A. When I became CEO, there was,
3 you know, no recommendation, or nothing was
4 brought to my attention on this matter.
5 And then in early 2023 when Mr. Walker and
6 the legal and compliance teams made a series
7 of recommendations, you know, we went and
8 implemented those changes.

9 Q. And then the write-up of the
10 judge's assessment finishes on the third
11 page. "Judge Brinkema also expressed concern
12 with the Communicate with Care policy's
13 instruction to copy in-house counsel on
14 e-mails in an attempt to assert privilege
15 where the Department of Justice contends
16 there should be none."

17 Was there really an instruction
18 to copy in-house counsel on e-mails just to
19 add a privilege to the document?

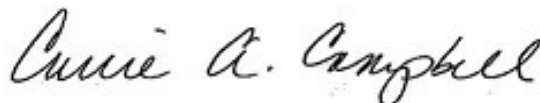
20 A. You know, I'm not familiar with
21 the specific thing she's referring to, but
22 one of the changes we undertook was to
23 reinforce training on the appropriate use of
24 attorney-client privilege to the -- to the
25 entire company in early 2023.

CERTIFICATE

I, CARRIE A. CAMPBELL, Registered Diplomat Reporter, Certified Realtime Reporter and Certified Shorthand Reporter, do hereby certify that prior to the commencement of the examination, Sundar Pichai, was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a verbatim transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



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